

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

MONTEZ KENNEDY,

Plaintiff,

File No. 2:08-CV-26

v.

HON. ROBERT HOLMES BELL

MARY ANN FROBERG, et al.,

Defendants.

/

MEMORANDUM OPINION AND ORDER

This matter is before the Court on remand from the Sixth Circuit Court of Appeals for the limited purpose of ruling on Plaintiff's pending November 25, 2009, Rule 4(a)(5) motion for an extension of time to file his appeal. (Dkt. No. 26, 6th Cir. Order; Dkt. No. 19, Pl.'s Mot.) For the reasons that follow, Plaintiff's motion will be granted.

An order dismissing Plaintiff's complaint was entered on October 30, 2008. (Dkt. No. 13.) Because no separate judgment was issued, the judgment is treated as being entered 150 days after entry of the decision. *See* Fed. R. Civ. P. 58(a) (requiring a separate judgment); Fed. R. App. P. 4(a)(7)(A)(ii) (providing that if no separate judgment is issued, a judgment is entered for purposes of Rule 4(a) when 150 days have run from entry of the order). Plaintiff timely filed a motion for reconsideration on November 14, 2008. (Dkt. No. 14.) Plaintiff's motion for reconsideration was denied on September 30, 2009. (Dkt. No. 18.) Plaintiff filed his motion for extension of time to file his notice of appeal on November 25,

2009. (Dkt. No. 19.) His motion was timely because it was filed within sixty days after the order denying his motion for reconsideration was entered. *See Fed. R. App. P. 4(a)(5)(A)(i)* (requiring a motion to extend time to file a notice of appeal to be filed no later than 30 days after the time prescribed by Rule 4(a) expires). The Magistrate Judge granted Plaintiff's motion for extension of time to file his notice of appeal, and Plaintiff filed a notice of appeal on January 26, 2010.¹ (Dkt. No. 24.) The Sixth Circuit determined that the Magistrate Judge lacked authority to rule on Plaintiff's motion for extension of time because it was a post-judgment order. The Sixth Circuit accordingly remanded Plaintiff's motion for extension of time to this Court for resolution. (Dkt. No. 26.)

A timely motion for extension of time may be granted upon a finding of excusable neglect or good cause. Fed. R. Civ. P. 4(a)(5)(A)(ii). Plaintiff requested an extension of time to file his notice of appeal based upon his assertion that, until he was informed otherwise, he thought he had 150 days after his motion for reconsideration was denied to file his notice of appeal because a separate judgment had not been issued. Plaintiff has made an adequate showing of excusable neglect or good cause. Accordingly,

IT IS HEREBY ORDERED that Plaintiff's motion for extension of time to file his notice of appeal (Dkt. No. 19) is **GRANTED**.

¹Although Plaintiff's November 25, 2010, certificate of service indicated that he filed a notice of appeal together with his motion for enlargement of time, the Court docket does not reflect receipt of such a notice. (Dkt. No. 20.)

IT IS FURTHER ORDERED that Plaintiff's January 26, 2010 notice of appeal (Dkt. No. 24) is **TIMELY**.

Dated: October 15, 2010

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE